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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,208	10/13/2005	Masaya Ugaji	043888-0404	1240

20277 7590 02/19/2010

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EXAMINER	
CANTELMO, GREGG	
ART UNIT	PAPER NUMBER
1795	
MAIL DATE	DELIVERY MODE
02/19/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/553,208	**Applicant(s)** UGAJI ET AL.	
	Examiner Gregg Cantelmo	**Art Unit** 1795	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *10 and 12*.
   Claim(s) withdrawn from consideration: *1-9 and 11*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Gregg Cantelmo/
Primary Examiner, Art Unit 1795

Continuation of 3. NOTE: Applicant argues the ratio of Lithium and asserts that such was presented in the previous arguments. While the previous argument does make such an assertion on page 7 it merely states such without giving any substantive evidence to support Applicant's assertion. Thus in the absence of any clear and convincing evidence this argument is not persuasive. Applicant further asserts in the after final response that the powders used by KR '618 would result in a Li ration that would be less than 3. This argument is not persuasive since it fails to provide any clear and convincing evidence to support this assertion and there is no clear showing that the prior art clearly and only provides a lithium ratio of less than 3 as alleged by Applicant. In addition the argument made therein is different from that in the response after final since the prior argument failed to mention the differences in the lithium silicon oxide starting materials. While the source materials of KR '618 and the instant invention may be different, this alone fails to present persuasive proof that the prior art does not and cannot provide a Li ratio as claimed.

Applicant further argues that by setting the Li ration from 3-3.7 the decreasing ion conductivity is more effectively prevented than in the case of a Li ration of less than 3. This argument is not persuasive, as a complete review of the acceptable inventive range of lithium includes values less than 3 (see Examples 11-13 of Table 3) and for lithium values less than 3, the electrolytes shown therein also exhibit improved ion conductivity (see Table 3). In addition, the specification itself teaches to the broader range of lithium (see the first paragraph after Table 3 which refers to Examples 11-17 in all which have improved resistance to decreasing ion conductivity of the composition. The fact that Examples 11-17 show different degrees of resistance to decreasing ion conductivity is not held to be clear evidence of significant unexpected results, particularly when the sweeping teachings of the original disclosure fail to provide any such evidence and when the specification teaches to the inventive concept to encompass lithium amounts less than 3 which are still appreciated as inventive embodiments of the instant application.

As to the argument of the amount of nitrogen in the final product. Applicant has now shifted arguments to present, after final, that KR '681 fails to recognize that the amount of nitrogen is a result effective variable and that the presence of nitrogen in the composition does not necessarily mean that the prior art exhibits the same amount of nitrogen therein. This argument is not persuasive for the following reasons. First, as should be apparent from the prior office action, the rejection does not explicitly state that nitrogen is a result effective variable. Rather the argument made was that the prior art sputters the target material in a reactive nitrogen plasma and that this will result in minor amounts of nitrogen being incorporated into the final sputter-deposited film. Second, as previously presented, the Examiner maintains, in the absence of evidence to the contrary, that the conditions upon which the composition is sputtered in nitrogen reactive plasma would have resulted in the same composition as that claims, else any differences between the two would have been minor and obvious. And while Applicant has argued to the contrary, the Examiner cannot be persuaded by such arguments since they fail to provide clear and convincing evidence to support their assertions/assumptions and it would still appear that the prior art conditions for sputtering would have anticipated, else obviated, the invention of claims 10 and 12.

For at least these reasons, the prior art rejections of record stand.